

No. 39847

**Netherlands
and
Bulgaria**

Agreement between the Government of the Kingdom of the Netherlands and the Government of the People's Republic of Bulgaria on mutual encouragement and protection of investments (with annex and exchange of letters). Sofia, 8 March 1988

Entry into force: *24 May 1990 by notification, in accordance with article 12*

Authentic text: *English*

Registration with the Secretariat of the United Nations: *Netherlands, 20 January 2004*

**Pays-Bas
et
Bulgarie**

Accord entre le Gouvernement du Royaume des Pays-Bas et le Gouvernement de la République populaire de Bulgarie relatif à l'encouragement et à la protection réciproques des investissements (avec annexe et échange de lettres). Sofia, 8 mars 1988

Entrée en vigueur : *24 mai 1990 par notification, conformément à l'article 12*

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[ENGLISH TEXT — TEXTE ANGLAIS]

AGREEMENT BETWEEN THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BULGARIA ON MUTUAL ENCOURAGEMENT AND PROTECTION OF INVESTMENTS

The Government of the Kingdom of the Netherlands and the Government of the People's Republic of Bulgaria, hereinafter referred to as the Contracting Parties,

Being desirous to create favourable conditions for making investments by investors of either State in the territory of the other State,

Recognizing that the encouragement and protection of investments in either Contracting State is in the interest of the expansion of economic cooperation,

Taking note of the Final Act of the Conference on Security and Cooperation in Europe,
Have agreed upon the following:

Article 1.

For the purposes of the present Agreement:

1. The term "investments" comprises property values and rights connected with the participation in enterprises or associations or with other types of participation, in particular:

- (a) property rights and other real rights,
- (b) outstanding claims and rights having economic value,
- (c) copyrights, rights in the field of industrial property (such as patents, licences, trade marks and names), technical processes, know-how and good will,
- (d) other property values and rights in the sense of this paragraph.

2. The term "incomes" means the amounts received from an investment for a certain period of time and in particular net profit, dividend or interest.

3. The term "investor" means:

(A) with respect to the Kingdom of the Netherlands:

- (a) a natural person having the nationality of the Kingdom in accordance with its laws;
- (b) a legal person constituted in accordance with its laws and having its seat in the territory of the Kingdom of the Netherlands, in so far as they are making or have made investments on the territory of the People's Republic of Bulgaria.

(B) with respect to the People's Republic of Bulgaria:

any juridical person as well as any economic or other company, enterprise or association with or without juridical personality established in compliance with the Bulgarian legislation and whose seat is on the territory of the People's Republic of Bulgaria, insofar as they are making or have made investments on the territory of the Kingdom of the Netherlands.

4. The term "territory" means the state territory of the Kingdom of the Netherlands and of the People's Republic of Bulgaria as well as the maritime areas adjacent to the coast of the State concerned to the extent to which that State may exercise sovereign rights or jurisdiction in those areas according to international law.

Article 2

1. Each Contracting Party shall, subject to its laws and regulations, create favourable conditions for investors of the other Contracting Party to make in its territory investments.

2. Investments made in compliance with the laws and regulations of the Contracting Party on the territory of which they are made and the incomes from such investments, enjoy the protection of the present Agreement.

3. In case of reinvestment of incomes from the investments, these reinvestments and their incomes will enjoy the same protection as the initial investments.

Article 3

1. Investments, incomes and activities associated with investments of investors of either Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party.

2. The treatment, as stated in paragraph 1) of this Article shall be no less favourable than that accorded to investments of investors of third States.

3. The provisions of paragraph 1) shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:

(A) agreements establishing customs unions, economic unions and communities or other similar institutions, as well as interim agreements leading to such unions, communities or institutions.

(B) any agreement or arrangement relating to the avoidance of double taxation.

4. Each Contracting Party shall observe any particular commitments it has undertaken with regard to a specific investment of investors of the other Contracting Party in its territory.

5. If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to the present Agreement contain a regulation, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such regulation shall to the extent that is more favourable prevail over the present Agreement.

Article 4

1. Investments of investors of either Contracting Party can be expropriated in the territory of the other Contracting Party only by virtue of the law, in the public interest, on a

non-discriminatory basis and against compensation. The compensation has to correspond to the genuine value of the expropriated investment immediately before the expropriation or impending expropriation became public knowledge. The compensation shall have to be paid immediately upon the expropriation, it has to be actually usable and freely transferable in convertible currency.

2. At the request of the investor affected the legality of the expropriation shall be reviewed by a judicial or other competent authority of the Contracting Party making the expropriation.

Disputes between one Contracting Party and an investor of the other Contracting Party concerning the amount of compensation shall, if possible, be settled amicably. If such disputes cannot be settled within a period of 3 months from the date either party requested amicable settlement and the parties have not agreed to any other dispute settlement procedures the amount of compensation shall at the request of the investor concerned be reviewed either by a judicial or other competent authority of the Contracting Party making the expropriation or by an international ad hoc arbitration court.

Article 5

1. Each Contracting Party shall permit the free transfer without unjustified restrictions of delay, the state of the other Contracting Party of payments resulting from investment activities and in particular of capital, incomes and in case of liquidation or sale of the incomes of such liquidation or sale.

2. The transfer is made within the time which is usually required for observing all the formalities for the transfer of amounts. This time limit in all cases should not exceed one month. It commences at the date when the request for the transfer has been made.

3. The exchange rate applicable to such transfer shall be the rate of exchange prevailing at the time of remittance.

Article 6

1. Disputes with respect to the interpretation or application of the present Agreement will be settled through negotiations between the Contracting Parties.

2. If the dispute cannot thus be settled within a reasonable period of time, it will, at the request of either Contracting Party, be submitted to a court of arbitration.

3. The court of arbitration shall be established on a case-by-case basis. Each Contracting Party will designate one member. The two members agree upon a national of a State with which the two Contracting Parties maintain diplomatic relations, to be a chairman who will be appointed by the governments of the two Contracting Parties. The members are to be nominated within two months' time, and the chairman within three months upon the notice of one of the Contracting Parties to the other about its wish to refer the dispute to the arbitration court.

4. If the time limits referred to in paragraph 3) have not been complied with either Contracting Party may, in the absence of any other agreement, request the President of the International Court of Justice to make the necessary designation. In case the President of the

International Court of Justice is a national of one of the Contracting Parties or if he is otherwise prevented, the Vice President of the International Court of Justice shall be invited to make the designation. If the Vice President is a national of either Contracting Party or in case he is also prevented to perform this function, the next by right of seniority member of the Court, who is not national of either Contracting Party, shall be invited to make the necessary designations.

The chairman and the members of the arbitration court thus appointed have to be nationals of a state with which the two Contracting Parties maintain diplomatic relations.

5. Before the arbitration court decides it may at any stage of the proceedings propose to the Parties that the dispute be settled amicably.

The arbitration court shall reach its award based upon the provisions of this present Agreement, the relevant domestic laws and the universally accepted principles of international law.

It shall take decisions by majority of votes. Its decisions are binding. Each Contracting Party bears the costs of the arbitrator it designates, as well as the expenses for its representation in the arbitration proceedings. The costs of the chairman and the remaining cases shall be borne in equal parts by the two Contracting Parties. The arbitration court may determine another way for settling the expenses. The arbitration court shall determine its own procedure.

Article 7

The present Agreement shall apply to investments which were made by investors of either Contracting Party in compliance with the legal regulations of the other Contracting Party in the territory of the latter as from January, 1, 1964.

Article 8

Either Contracting Party will resolve in compliance with its laws and regulations and as favourable as possible, the questions concerning the entry, stay, work and movement on its territory of nationals of the other Contracting Party and of their families forming part of their household who carry out activities connected with the investments in the sense of the present Agreement.

Article 9

Either Contracting Party may propose the other Party to consult on any matter affecting the operation of the present Agreement. The other Party shall display goodwill to and shall afford adequate opportunity for such consultation.

Article 10

The provisions for implementation of some of the articles of the present Agreement are subject to an Annex which is an integral part thereof.

Article 11

As regards the Kingdom of the Netherlands, the present Agreement shall apply to the part of the Kingdom in Europe and to Aruba.

Article 12

1. This Agreement shall enter into force thirty days after the date on which the last of the notes has been received in which the Contracting Parties notified each other that the constitutional requirements for the entry into force of this Agreement have been fulfilled.

2. This Agreement is concluded for a period of 10 years. Its validity shall be extended for an indefinite period of time unless either Contracting Party notifies in writing at least 6 months prior to its expiry the other Contracting Party of its wish to terminate the Agreement. After the ten year period of validity each Contracting Party has the right to terminate the Agreement upon a 6 month's written notice. The termination shall become effective 6 months after the notification has been received by the other Contracting Party.

3. In respect of investments made prior to the date on which the termination of this Agreement becomes effective, the provisions of this Agreement remain in force for a further period of 15 years from that date.

Done in Sofia on 8 March 1988 in two originals in the English language.

For the Government of the Kingdom of the Netherlands:

H. VAN DEN BROEK

For the Government of the People 's Republic of Bulgaria:

PETAR MLADENOV

ANNEX

On signing the Agreement between the Government of the Kingdom of the Netherlands and the Government of the People's Republic of Bulgaria on Mutual Encouragement and Protection of Investments, the authorized representatives of both Contracting Parties have agreed upon the following provisions, which constitute an integral part of this Agreement:

1. Ad Article 3

Activities associated with investments means the operation, management, maintenance, use, enjoyment or disposal of those investments by the investor.

2. Ad Article 4

(A) The provisions of Article 4 shall also apply to conversion to public ownership, subjection to public control, as well as any other deprivation or such limitation of property by sovereign measures, which in their consequences will be tantamount to expropriation.

(B) The international court of arbitration referred to in para 2 is formed on a case-by-case basis, either party to the dispute designates one member, and the two members agree upon a national of a third State as a chairman. The members have to be designated within a 2 months period, and the chairman within 3 months after the communication of one party to the dispute to the other that it wants to refer the dispute to the arbitration court. If the above stated periods of time are not complied with, either party to the dispute, in the absence of any other arrangement, may invite the Chairman of the International Court of Arbitration of the Chamber of Commerce in Stockholm to make the required appointment.

The Chairman and the members of the arbitration court thus appointed have to be nationals of a State with which the two Contracting Parties maintain diplomatic relations. The arbitration court shall decide on the basis of the provisions of the present Agreement, the relevant domestic laws and the principles of international law accepted by both Contracting Parties.

The court shall determine its own procedure, applying the arbitration rules of the United Nations Commission for International Trade Law (UNCITRAL) of 15 December 1976. The court takes its decision by a majority of votes. Such decision is final and binding. It is implemented in compliance with domestic law. The decision shall state the basis upon which it has been issued. Upon request of either party to the dispute considerations leading to it should be provided.

Each party to the dispute shall bear the costs of the member appointed by itself and for its representation in the arbitration procedure. The costs of the chairman and the other expenses shall be borne in equal parts by both parties.

Ad Article 5

(A) As far as the People's Republic of Bulgaria is concerned the means of the free transfer under Article 5 are provided: in compliance with the foreign exchange regulations in force in the People's Republic of Bulgaria at the time of signing this Agreement payments within the meaning of Article 5 will be transferred abroad against the foreign exchange account of associations with foreign participation. If the foreign exchange assets of

the associations with foreign participation are insufficient for payments within the meaning of Article 5, the Bulgarian National Bank will make available the foreign exchange required for the transfer in exchange for domestic currency. This applies to the transfer of the share of profits and interest, if the association with foreign participation is engaged with the permission of the competent Bulgarian authorities in economic activities which yields receipts consisting wholly or partially of domestic currency.

(B) With regard to the earnings of the personnel working in relation to an investment, in compliance with the regulations in force at the time of signing this Agreement, those earnings

- may be transferred up to 50% from the People's Republic of Bulgaria:
- may be transferred without restrictions from the Kingdom of the Netherlands.

For the Government of the Kingdom of the Netherlands:

H. VAN DEN BROEK

For the Government of the People's Republic of Bulgaria:

PETAR MLADENOV

EXCHANGE OF LETTERS

I

Sofia, March 8th, 1988

Excellency,

With reference to the Agreement between the Government of the Kingdom of the Netherlands and the Government of the People's Republic of Bulgaria on Mutual Encouragement and Protection of Investments, signed today, I have the honour to state that it is the understanding of my Government that each Contracting Party shall extend to joint companies in which investors of the other Contracting Party participate, a treatment no less favourable than that extended to companies in which no foreign investors participate.

I would appreciate to receive your confirmation that the above is also the understanding of your Government.

Please, Excellency, accept the assurances of my highest consideration.

H. VAN DEN BROEK
Minister of Foreign Affairs
of the Kingdom of the Netherlands

To His Excellency
Mr. P.T. Mladenov
Minister of Foreign Affairs of the
People's Republic of Bulgaria
Sofia

II
Minister of Foreign Affairs

Sofia, March 8, 1988

Excellency,

I have the honour to acknowledge the receipt of your letter of today's date, March 8, 1988 which reads as follows:

[See letter I]

I have the honour to confirm that the above is also the understanding of my Government.

Please, Excellency, accept the assurances of my highest consideration.

PETAR MLADENOV
Minister of Foreign Affairs
of the People's Republic of Bulgaria

H. E. Mr. van den Broek
Minister of Foreign Affairs of the
Kingdom of the Netherlands